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Preemption: Military Action and Moral Justification

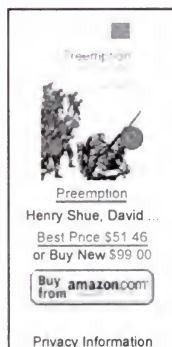
By Henry Shue and David Rodin, eds.

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This collection of nine articles presents an informative, often profound, and mutually respectful exchange of views among top-echelon war studies scholars. Their fulcrum: the George W. Bush administration's National Security Strategy (NSS) statement regarding preventive war issued in September 2002^[1], prior to the invasions of Afghanistan and Iraq. As promised in the book's subtitle, each contribution explores the question of moral justification for military actions. The result is a learned exercise clarifying when non-rookie entities may attack an enemy (however defined) but not precisely defining what sorts of military action might necessitate retaliation.



The assessments of Bush-era justifications for preventive war fall here roughly into three groups: (1) empirical appraisals of how other governing bodies past and present have appealed to preventive war doctrines; (2) endorsements in principle of preventive war within strict limits; and (3) critiques that, for various reasons, reject preventive war theory altogether.

1. Empirical accounts of actual preventive war appeals are provided by military historian Hew Strachan (Oxford), who focuses primarily on pre-World War II European countries (chap. 1: "Preemption and Prevention in Historical Perspective," 23-39), and political scientists Marc Trachtenberg (UCLA), who addresses World War II and the Cold War era (chap. 2: "Preventive War and US Foreign Policy," 40-68), and Neta Crawford (Boston), who evaluates US and UN appeals to preventive war doctrine (chap. 4: "The False Promise of Collective Security through Preventive War," 89-125).

Two crucial historical turning points with regard to preventive war appeals were the 1928 Kellogg-Briand Pact and the emergence of nuclear weaponry in 1945. Kellogg-Briand—adopted by fifteen World War I belligerents and later enshrined in the UN Charter and the proceedings of the Nuremberg war crime trials—replaced the assumption that a sovereign state is ipso facto entitled to go to war whenever it deems it advantageous with a mandate that war be undertaken only for defense (33, 116). States had previously considered prevention an adequate justification for military action at least since the Peloponnesian War. Proponents of this normative constraint on preventive war explain it as a type of defense. Meanwhile, countries with nuclear arsenals have revived the older system whereby, on Strachan's account, European nations routinely embraced prevention, notably to maintain "the balance of power."

Trachtenberg shows quite convincingly that post-World War II leaders in the United States have thought in terms of what John Kennedy's State Department called "anticipatory self-defense" (50) and what the 2002 NSS labeled "proactive counterproliferation efforts" (56). Crawford finds both US and UN rationales for preventive war as self-defense unpersuasive. This she does with clear if not definitive argumentation, first targeting the US appeal to its global interests and responsibilities as furthering its goals of preeminence both at home and abroad. She shows that the UN's authorizations of preventive war stem from its forceful policy of humanitarian intervention, especially under Secretary General Kofi Annan. Crawford faults that policy as undermining the spirit of Kellogg-Briand: "the use of preventive force, whether under the authorization of the UN Security Council or when undertaken by an individual or coalition of states without such authorization does not promote international peace and security. It in fact undermines an international order based on the rule of law that it is designed to protect. The Secretary General and the High-Level Panel are thus correct to emphasize primary prevention, but unwise to promote a doctrine of preventive uses of military force" (124).

2. Four of the essays in *Preemption* accept preventive war doctrine within certain limiting conditions. International relations theorist Henry Shue (Oxford) imposes (unrealizable) conditions on "early military attack" (EMA) (chap. 9: "What Would a Justified Preventive Military Attack Look

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Like?" 222-46). Philosophy and legal studies professor Walter Sinnott-Armstrong (Dartmouth) offers an act consequentialist basis for possible preventive war (chap. 8: "Preventive War—What Is It Good For?" 202-21); philosopher Allen Buchanan (Duke) stipulates the involvement of efficacious regulatory institutions (chap. 5: "Justifying Preventive War," 126-42); and legal scholar David Luban (Georgetown) leaves the door to preventive war ajar by countering a wide range of objections through analogies to criminal conspiracy law (chap. 7: "Preventive War and Human Rights," 171-201).

Shue associates preemption with an EMA that is "neither a defensive response against an actual attack nor a preemption of an imminent threat" (222). He lays out four "tentative necessary conditions" for a morally justified EMA: it must be limited to effective elimination of the danger that prompts it; it must also be urgent, based on "well-verified, solid intelligence," and consistent with internationally acceptable principles. "Even these four conditions seem extremely difficult to satisfy" (245-46).

Sinnott-Armstrong asserts that "whether a war is morally wrong depends on balance of probabilities of various values and disvalues among its consequences" (215). Turning to some concrete cases, he deems justifiable several Israeli-initiated attacks against perceived threats and also, pace Rodin, US participation in World War II because, by his calculations, it saved millions of lives in the long run. He concludes otherwise regarding the wars in Afghanistan and Iraq. But he does allow for preventive war against a rogue state threatening to use weapons of mass destruction (WMDs), if sanctioned by an impartial body with provision for reparations should pre-war intelligence prove to have been faulty.

Buchanan, while reckoning no past preventive war to have been justified (142), yet contends such a war might be morally permissible in certain contexts, as might be the disruption of a planned attack. But he insists on appropriate multilateral institutions empowered to assess proposed attacks before and after their initiation. He also responds to various theoretical objections: for example, a consequentialist misperception of potential threats or an agent-centered case based on underestimation of risks likely to be incurred.

Luban posits a conditional defense of Bush administration preventive war doctrine. Against the human rights objection that preventive war inevitably harms innocents, he stresses that all wars harm innocents and that just wars ultimately ensure human rights. He rejects both pacifism and amoral realism regarding war, but endorses "a form of *jus in bello* that offers protection of human rights at a lower baseline level than the morality of civilian life." This lower bar for justified killing, he says, validates lethal responses to threats in "anarchic settings" (183, 185), notably when rogue states aim to construct WMDs. He then rationalizes unilateral intervention by analogy with a rule-of-law government that investigates, arrests, and punishes criminal conspirators. Here in particular he tries to dismantle Rodin's argument that asserting opposition to a conspiracy to justify military action is inherently paradoxical.

3. Two writers see no reliable justification for military action in preventive war doctrine: applied ethicist Suzanne Uniacke (Hull) denies that such action qualifies as self-defense (chap. 3: "On Getting One's Retaliation in First," 69-88) and war theory specialist and philosopher David Rodin (Oxford) maintains it can be supported neither as a consequentially preferable course of action nor as self-defense under just war theory (chap. 6: "The Problem with Prevention," 143-70).

Approaching preventive war via a kind of semantic interpretation of just war theory's self-defense standard, Uniacke contends that "the use of aggressive force is subject to different, more stringent ethical norms than is the use of retaliatory force in self-defense" (88). Preventive war is thus immoral because it does not constitute self-defense, that is, retaliation against harm endured.

Rodin rules preventive war immoral on both consequentialist and self-defense grounds. He asserts that consequentialist assessments of war cannot accurately establish "the long-term balance of consequences" (146), and rule consequentialist arguments create an impasse to the justification of preventive war. Luban's approach in particular unacceptably broadens the scope of permissible war and is ambiguous as to the rules of war and competitors' strategies against one another. This debate is far from resolved among its participants. Also an invitation to further debate is Luban's turning criminal conspiracy law into a rationale for preventive war. This, says Rodin, too easily validates the propriety of either "a preventive attack against the military capability of the enemy" or "a rule that permitted planning and preparation for preventive war" (168). And such validation should not be based on subjective judgments about others' motivations. After all: "Modern states have standing armies, and the strategic planning organs of those armies constantly engage in planning and preparation for military action that is both defensive and offensive in the tactical sense. In the modern world, therefore, active preparation for war can be taken as a given for most states" (169).

This raises two pressing practical questions in an otherwise theoretical discourse: first, what constitutes military action? and second, is any military power exempt from preventive war

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standards? Regarding the first, does "military action" encompass, for example, such US and/or Israeli "shadow war" operations as the assassination of Iranian nuclear scientists or the contamination of Iran's nuclear program computers with the Stuxnet worm?^[2] Such considerations are also implicit in Crawford's analysis and the editors' warning that, in the absence of relevant distinctions, "capabilities are automatically construed as threats, without consideration of purposes" (20). Nonetheless, despite its critical importance, this question is not addressed directly in the book. Contributors assume that a "military action" is what military personnel engage in or what officials with ruling authority, military or civilian, command military personnel to do. Although they do refer broadly to pursuit of "a policy of war" (43), a "rearmament program" (44), "preparation for war in peacetime" (28), "mobilization" (126, 135), "acquisition of defensive weapons" (73), "recourse to arms" (184), and—the ultimate shorthand expression—"nuclear deterrence" (36), they lack the expertise necessary to address the relevant and arguably determinative ethical issues in business and industry.^[3]

The second question pertains especially to the United States, whose assumption of global responsibilities (see Sinnott-Armstrong, 220, and Crawford, 95-96) is embedded in a vast empire, maintained by certain soft-power measures but mostly by the unprecedented production, use, and distribution of weapons, ancillary systems, and military support services. The US direct annual military budget exceeds that of the next twenty-seven countries combined. And, leaving aside secret status-of-forces agreements, the United States maintains hundreds of bases in some sixty countries and territories.^[4] Some of these just might be perceived by other countries as security threats.

David Luban is the most sensitive of the contributors to the challenge this de facto empire-building poses for those who would adduce moral standards for preventive war. In an appendix, he even suggests that "the United States can reasonably be suspected of veering toward rogue status" (199)—unacceptable, given his robust critique of the neoconservative notion that the United States' hegemonic role in the world exempts it even from the need to justify its preventive military actions.^[5]

Preemption offers abundant close reasoning about the morality of preventive war. It exemplifies the best of post-9/11 Anglo-American scholarship on the subject.

[1] Available online.

[2] See Peter Beaumont, "Stuxnet Worm Heralds New Era of Global Cyberwar," guardian.co.uk (30 Sep 2010), and William J. Broad and David E. Sanger, "Worm Was Perfect for Sabotaging Centrifuges," *NY Times* (18 Nov 2010).

[3] See Byrne, "Assessing Arms Makers' Corporate Social Responsibility" and "The U.S. Military-Industrial Complex is Circumstantially Unethical," *Journal of Business Ethics* 74 (2007) 201-17 / 95 (2010) 153-65; also, Stuart D. Brandes, *Warhogs: A History of War Profits in America* (Lexington: U Pr of Kentucky, 1997).

[4] See Chalmers Johnson, *Nemesis: The Last Days of the American Republic* (NY: Holt, 2006) 137-70.

[5] See Luban, "Preventive War," *Philosophy and Public Affairs* 32 (2004) 236-48.

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